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IS IT A CRIME FOR A PHYSICIAN TO CAUSE A PARENT TO WITHHOLD A LIFE-SAVING OPERATION OR REMEDY FROM A DYING CHILD?

The Declaration of Independence says that all men "are endowed by their Creator with inalienable rights" to "life, liberty and the pursuit of happiness." The preamble to the Constitution says it was formed to "secure the blessings of liberty to ourselves and our posterity."

Of the amendments it is provided by Article V that federal power is restricted to the taking of life for crime only by due process of law, and Article XIV forbids any state depriving any person of life without due process of law. This latter amendment also forbids any state denying "to any person within its jurisdiction the equal protection of the laws."

It seems, therefore, that according to the scheme upon which our institutions are based there is a natural right to life and the society formed by our union under constitutional law does not require any surrender of this right, but, on the contrary, it is designed to preserve it. There is a well understood exception, plainly implied by Article V, that crime may forfeit this natural right, but nothing else may.

It is true that the pursuit of happiness, and the use of property may be regulated, but no governmental purpose may destroy the right to either, except adequate compensation be made. Does the right to life stand on any different footing, no question of crime being involved? What may a government offer to the loser of his life in the way of adequate compensation?

What is the limit of a parent's rights over and duties to his offspring? At all events, they are but aids in the caring for its life, and not in any sense the offering of a means for its impairment and far less for its destruction. For example, he may be held liable for necessaries furnished by third persons for its support. It would be strange, indeed, were it claimed in defense to a suit for such necessaries for a parent, to urge that he intended that his child should die of neglect.

Statutes have been enacted making it a criminal offense, and among them a law of Illinois, to expose a child under one's legal control, to any injury to health or limb, or unnecessarily expose him to inclement weather. Lynam v. People, 65 Ill. App. 687. It would be a strange defense for a parent to say the child is a born defective and in the interest of itself and society it were better for it to perish from neglect.

More directly in point on this subject is a statute of New York which punishes as a wrong to a child the permitting its life to be endangered and the taking of no steps to save that life. Cowley v. People, 83 N. Y. 464.

These statutes go upon the theory that every child has an inalienable right to life and certain persons having the right of custody are punishable for neglecting to care for that life. Nowhere is it suggested that custody imposes any other than duty to a child as a living sentient being.

If a parent has merely a duty to preserve the life and health of a child, it certainly would not seem to be the arbiter of its death. And one agreeing with the parent that neglect to care for its life is to be in pursuance of a purpose that its death without care will probably occur, appears to us opposed to every principle in our law.

If our government regards the right to life as preserved, instead of further endangered by our law, what right has any citizen to agree for the benefit of society, that a particular child is not entitled to the

blessing of life? And may anyone determine that there is no deprivation of the blessing of life as to any being? If he has a reason that satisfies him, may not another have another reason that satisfies him, that there is no blessing in a particular life?

The result of such reasoning would not be in furtherance of government, but in direct support of anarchy.

We have shown, we think, that an agreement with a parent for a child to be permitted to die from neglect is one to accomplish a crime. It therefore excuses no one that he makes such an agreement. But it may be evidence against him of deliberation to perpetrate a crime. What crime may this be if death results?

It has been laid down as a principle in criminal law that taking the life of one affected with an incurable disease in no way extenuates the guilt of his slayer. 21 Am. & Eng. Encyc. Law 93, citing authorities. It is also a principle that punishable homicide may be the involuntary result of any unlawful act or conduct. Is it not an unlawful act or unlawful conduct for a physician to advise a parent that he has no duty to care for the life of his child, and he, with his parent's consent, will withhold from the child the means of life?

It is a principle of law that one who from domestic relationship has the custody of an imbecile child, or any child having any incapacity of mind or body, is guilty of manslaughter, "if by culpable negligence he lets the helpless creature die." Reg. v. Cox, 13 Cox C. C. 75. If such a ruling could be made in a monarchical government, *a fortiori* might it be made in a country where its constitution is framed to secure the inalienable right to life.

This editorial is suggested by the recent determination by a physician in a Chicago hospital, upon consent of a child's parent, to withhold from a child the benefits of an operation, that would have saved its life. The reasoning to this conclusion was that the child was a monstrosity in deformity and probable lack of brain power. It was only agreed that this course could be taken as to such a child, and not as to a normal child.

Waiving, however, the question of ultimate benefit to society in the child's not being permitted to live, first it is denied, that there is any distinction under our law in the right of a defective child to life and of one that is normal. Secondly, if there is such a distinction, law should provide the means for its application. Until this is done, the distinction is non-existent.

Theorists as to what will benefit society, more should be bound by the rules that society makes for itself, than others are. Back, however, of all statute on this subject, our contention is that any statute, which contemplates the depriving of another of life except as a forfeit for crime, would be unconstitutional.

In conclusion, we may say if the physician assumes to act for the parent, he stands in *loco parentis* and is bound as the parent would have been bound for neglect to save the life of the child. If this doctor's position is right and lawful, then the eugenics may urge that, for moral defectiveness, a child may, upon consent of a parent, be neglected though he surely will die from the neglect. The upshot of all of this is that physical or moral defectives may be submitted to vivisection as the supreme requirement of science. And so the fame of Herod will "pale its ineffectual fires."

We do not wish to assail this doctor's moral view—we have nothing in a law journal to say about that. We do say, however, that he seems never to have asked himself how he, as arbiter of death, would stand as to the law of the country where he lives.

NOTES OF IMPORTANT DECISIONS.

MORTGAGES — LIEN ON AFTER-ACQUIRED REAL ESTATE.—In Gallagher v. Stern, 95 Atl. 518, the Supreme Court of Pennsylvania holds that where one of two tenants in common gives a mortgage on the entire property, his subsequent purchase of the interest of the other tenant in common, does not give his mortgage priority over the lien of a judgment subsequently obtained.

We conceive this ruling would not apply to a chattel mortgage on a stock of goods and purchases made to supply portions of the stock sold in ordinary course of trade, nor upon live stock and the increase thereof, as see the reasoning in support of the conclusion reached.

Thus the court quotes from an older Pennsylvania statute, and adopts what is said, as follows: "In searching for incumbrances or conveyances, the search against Calder would begin with his title from Chapman, and the search beyond would be against Chapman, and those through whom he claimed; and a search against Calder during the same period would be considered an utter absurdity. If the mortgage and the conveyance were ten years apart, the case would be more glaring than the one presentd to us. * * * There is no hardship on the mortgagees, for an examination of the title when they took the mortgage must have shown them Calder had no title to the factory lot."

That case did not refer to any interest like the one before the court, but the court said: "The fact that the question involves the interest of one owning the entire piece of ground, does not affect the principle involved."

Usually, statutes in their general language make the record constructive notice of whatever a conveyance duly recorded may embrace, and abstract offices undertake to give the history of property so far as any recorded conveyances may affect it. But statutes also require that indexes to the records shall be kept, as an aid to discovering what appears in the records regarding any real estate. The Pennsylvania court evidently considers that faithful examination of a proper index to records ought to suffice; and there is no reason for running them down through collateral lines.

This case, though, did not require examination along a collateral line, but in running down the main line the judgment creditors ascertained that the mortgagor was conveyed the very property that he had mortgaged before he had any title thereto. Unless he offended some principle of champerty, in putting a mortgage on property that did not belong to him, we do not see how subsequent creditors were injured. The creditors here were those of the tenant who sold to the mortgagor the property previously mortgaged by him.

COMMERCE—SALE OF NATURAL GAS CARRIED IN PIPE LINE ACROSS STATE LINES.—The Original Package decision comes into discussion by Kansas Supreme Court as or not determinative of the question when natural gas carried from one state to another by a pipe line enters into the mass of property in the state to which it has been conveyed. State v. Flannelly, 152 Pac. 22.

In this case it was contended by the receivers of a natural gas company that they were engaged in interstate commerce and thus beyond the control of the state's Public Utilities Commission.

The court, referring to the facts in the case at bar, said: "The original package rules will be of some instance in determining whether or not the receivers' sale of gas in this state is interstate commerce. The original package of gas is broken when the first gas is taken out of the pipe line. Thereafter the gas ceases to be an article of interstate commerce. The gas when sold has become mixed with the common mass of property in this state by being so commingled with gas produced here as to completely lose its identity. * * * If the analogy of original packages or importation of property in bulk applies to gas in the mains, it ceases to apply when thousands of service pipes are filled with gas to be drawn off at such times and in such quantities as the individual consumer desires. Interstate commerce is at an end when the bulk of imported gas is broken up for indiscriminate distribution to individual purchasers at retail sale."

The analogy is quite apt, and the theory of law about a commingling with the mass of property by a sale of a part of an entirety, takes a very definite form when there is a permeation through the entire mass of a state element. This permeation infuses or informs the whole mass, like heat in a red-hot iron informs the iron.

EVIDENCE—OPINION IN RES GESTAE STATEMENT.—A refinement respecting the exclusion of hearsay evidence, which was considered in a statement so near to the happening of an occurrence as to be deemed a part of the *res gestae*, is disclosed in an opinion by the Supreme Court of Iowa. Whitney v. Sioux City, 154 N. W. 497.

The opinion says: "After being precipitated in the gully, plaintiff and Dorothy Lawrence were taken to the house of St. Onge, and witnesses were asked in substance what Dorothy Lawrence then said in presence of persons named, and an objection as incompetent, irrelevant and immaterial and no foundation laid was sustained. Defendant offered to show that she said: 'We were going too fast and I told John so.' What she said of the speed of the car was a mere opinion or conclusion of the deceased and no statement of fact as to how fast the car was going. This being so, it was not admissible, even if a part of the res gestae."

This observation by the deceased was admissible, if at all, because it stood on the basis of exclamatory remarks. From such the jury draws its conclusions. Necessarily it is brief, and leaves much to be desired in the way of detail. But this is supplied by the fact of its spontaneity. If details were given, this would tend to show that the statement was so well considered as to take it out of the confines of a res gestae statement. And answers given to interrogatories would have a like effect.

But was the statement purely opinion? Non-expert witnesses may testify to many things which involve conclusions, but they are conclusions that are the resultant of things impossible to portray in words. For example, one may say a man was drunk, that he looked sick, that he acted like a crazy man. This is not far from saying one was making his car go too fast, even if decedent's saying she told him so related to "some time prior to the accident," as the court said it did. How the court knew this we cannot say.

We believe that the rule of exclusion of hearsay evidence should have extension in exceptions thereto. It is purely an English rule and not one of the civil law. Especially, we think that statements in their nature exclamatory should be treated with great liberality.

LIABILITY OF OWNER FOR NEGLIGENCE OF MEMBER OF HIS FAMILY IN OPERATING AUTOMOBILE.

There are two theories on which the owner of an automobile may be held liable for injuries caused by his machine while it is being operated by another. One is founded on agency or the relation of master and servant; the other is based on negligence of his own in intrusting his machine to one who is incompetent or has not the ability to properly operate the machine. These rules are applicable whether or not the operator is a member of the owner's family.

An automobile is not in itself a dangerous instrument and the rule of law relating to liability for injuries caused by dangerous animals, explosives, and the like, does not apply to its use.[1]

However, an automobile is a machine that is capable of doing great damage, if not carefully handled, and for this reason the owner must use care in allowing others to assume control over it. If he intrusts it to a child of such tender years that the probable consequence is that he will injure others in the operation of the car, or if the person permitted to operate the car is known to be incompetent and incapable of properly running it, although not a child, the owner will be held accountable for the damage done, because his negligence in intrusting the car to an incompetent person is deemed to be the proximate cause of the damage.[2]

Automobile Kept For Use Of Family.—One who keeps an automobile for the pleasure and convenience of himself and his family, is liable for injuries caused by the negligent operation of the machine while it is being used for the pleasure or convenience of a member of his family.[3]

(1) Goodman v. Wilson, Tenn., 1914, 166 S. W. 752.

(2) Allen v. Bland, Tex. Civ. App., 1914, 168 S. W. 35.

(3) Lashbrook v. Patten, 1 Duv. (Ky.) 317; Stowe v. Morris, 147 Ky. 386, 144 S. W. 52;

This is on the theory that the principal or master is responsible for the wrongful acts of his agent or servant committed while acting under his express or implied authority and in furtherance of his business.[4]

And the fact that a son, member of the owner's family for whose pleasure the automobile is maintained, was operating the same for his own pleasure, does not change his relation of agent to his father,[5] because the father made it part of his business to furnish pleasure to his son.

Thus, in an action in which it appeared that a father kept an automobile which he authorized his child to use for pleasure at any time, and that the child operated the car so negligently that she caused a collision with another machine, to the injury of the occupants of the other machine, it was held that the liability of the owner was a question for the jury.[6] In this respect the court said: "Defendant might properly make it an element of his business to provide pleasure for his family; and, as the car was intended for the use of the members of the family for purposes of pleasure, as well as for other purposes, and the daughter had authority to take it and operate it for such purposes, it was at least a question for the jury whether, at the time of the accident, she was not the servant of the defendant and engaged upon the business of defendant."

Where the owner of an automobile gave his wife general authority to use the machine whenever she desired to do so, and his son, who was the only member of the family licensed to drive the machine, was expected to obey the mother, such owner was held liable for injuries caused by the negligent operation of the machine by the son who was driving it with his mother and at her request.[7]

So, too, an owner who keeps an automobile for the use of his family, and who directs his chauffeur to take their orders, is liable for injuries caused by the negligence of the chauffeur while operating the machine under the directions of the owner's son.[8]

A father who kept an automobile for his family's use was liable for injuries caused by its negligent operation by his minor son who was driving the machine for the pleasure of himself and sister, and a friend, who was a guest of the father's family, it being held that the son was performing the business of the father at the time.[9]

In an action against a father and son to recover for the death of plaintiff's husband, caused by his team, which he was driving on a public highway, becoming frightened by the negligent operation of the defendant father's automobile, while it was being driven by the defendant son, and running away, it appeared that about a year prior to the accident the father bought the automobile for the use of himself and family, which consisted of several members, including the defendant son and two other sons, all of whom learned to operate the machine, but the father did not learn to operate it. The defendant son had reached his majority, was married, worked in the bank of which his father was president, and lived with his father's family as a member thereof, paying no board. The father testified that when he purchased the machine none of the children were to use it without his or his wife's consent, but that at no time had any of them been refused the use of it when requested. On the day of the accident the father was absent, and the son was working in the bank as usual. That afternoon the machine was left in front of the bank by

Daily v. Maxwell, 152 Mo. App. 415, 133 S. W. 351; Marshall v. Taylor, 168 Mo. App. 240, 153 S. W. 527; McNeal v. McKain, 33 Okla. 449, 126 Pac. 742, 41 L. R. A. (N. S.) 775; Davis v. Littlefield, 97 S. C. 171, 81 S. E. 137; Birch v. Abercrombie, 74 Wash. 486, 133 Pac. 1020.

(4) Ploetz v. Holt, 124 Minn. 169, 144 N. W. 745.

(5) Marshall v. Taylor, 168 Mo. App. 240, 153 S. W. 527.

(6) Kayser v. Van Nest, Minn., 1914, 146 N. W. 1091.

(7) Smith v. Jordan, 211 Mass. 269, 97 N. E. 761.

(8) Cohen v. Borgenecht, 83 Misc. Rep. 28, 144 N. Y. Supp. 399.

(9) McNeal v. McKain, 33 Okla. 449, 126 Pac. 742, 41 L. R. A. (N. S.) 775; Stowe v. Morris, 147 Ky. 386, 144 S. W. 52.

the mother, and at about 4:30 in the afternoon the son and the other employes in the bank took the automobile and went into the country a few miles for a pleasure ride, and it was on the return trip that the accident occurred. It was held that the father was liable, the Court, in part, saying: "When the ownership of the machine was conceded, the presumption arose that when defendant's son was using it he had his father's consent therefor, and the burden was then cast upon the father to prove to the satisfaction of the jury that no consent was given. The facts disclosed by the testimony tended strongly to prove that the son had the actual or implied consent of the mother. The machine was left standing in front of the bank, where the son was employed, having been left there by his mother, and there being no showing that she intended to or did return there for it, and he was permitted without objection from anyone to take it and go upon a pleasure trip."[10]

Where the neice of the owner of a car, who resided in his household, was operating the machine at the time of an accident, but was not operating it for any general or special purpose of the owner, but for her own purposes, the owner was held not to be liable.[11]

One Hayes owned an automobile which he kept for the general use of his immediate family, and it was for this purpose habitually operated by himself and his two sons (who were members of his family), sometimes with and sometimes without his express consent or direction. On the occasion in question one of the sons was driving the car, and it contained also the wife and daughter of the father, who were also members of his immediate family, and two others, one a young lady guest of the daughter, and the other a young man guest of the son. While on this trip the plaintiff, a little girl 7 years of age, was injured by the negligent operation of the automobile. It was held that these facts were sufficient to form a basis for a finding that the son was acting as the servant of the father and within the scope of his employment as such. Hence, judgment against the father was affirmed.[12]

In this case the court said: "In the present case there exists a very important fact, which is that the automobile at the time of the accident was occupied by the father's immediate family and their guests. This fact constituted affirmative evidence that the automobile was being used in the father's affairs or business. It was within the scope of the father's business to furnish his wife and daughter, who were living with him as members of his immediate family, with outdoor recreation just the same as it was his business to furnish them with food and clothing, or to minister to their health in other ways. It cannot be said, therefore, that in this case there was no evidence of possession except a mere presumption which could be overcome by proof of inconsistent facts. Here there was affirmative proof of the fact of possession quite apart from any presumption."

Where the head of a family kept an automobile for the pleasure of himself and family, and it was customary for his son, 24 years of age, who was a law student, and lived at home, to act as chauffeur when the car was used by his father or any other members of the family, it was held that the owner was not liable for injuries caused by the negligent operation of the car by the son when he had taken the car for a pleasure drive accompanied by several of his friends, neither the owner nor any other member of the family, except the son, being in the party. The court held, that at the time of the accident the car was neither expressly nor constructively in the use or service of the owner, and that in driving the car the son was in no way acting as the agent of the father.[13]

(10) Hayes v. Hogan, Mo. App., 1914, 165 S. W. 1125.

(11) Roberts v. Schanz, 83 Misc. Rep. 139, 144 N. Y. Supp. 824.

(12) Missell v. Hayes, N. J., 1914, 91 Atl. 322.

(13) Heisenbuttel v. Meagher, 147 N. Y. Supp. 1087.

A married woman owned an automobile as her separate property, and with her consent it was used for and by the family in the usual manner of family conveyances, being driven by different members of the family, including her son. On the day in question she was absent from home, but, with her approval, given before her departure, her daughter, a member of the family, gave a luncheon to some of her friends. To assist in the work of the luncheon, an extra servant was procured for the day, and, during the evening, it became necessary to convey this servant to a street car that she might return to her home. The son, at the request of the daughter, his sister, then proceeded with the servant to the street car in his mother's automobile, and during the trip, negligently ran over and injured a person. The owner knew nothing about this use being made of the machine, but, as she testified, the machine was there to be used for family purposes as the occasion might arise. It was held that the owner of the automobile was liable.[14]

In a jurisdiction holding that where it is shown that the vehicle doing the damage belonged to defendant at the time of the accident, that fact raises the presumption that the vehicle was then in the possession of the owner, and that whoever was driving it was doing so for the owner, it was held that this presumption was not overcome as a matter of law by evidence of mere advice and an expression of preference on the part of a parent, owner of an automobile which injured a pedestrian while being operated by his daughter, some weeks before the accident, that the daughter should not drive the machine.[15]

While it has been declared that where a parent provides an automobile for the pleasure of his adult child and an injury is caused to another by the negligent operation of the machine while it is being driven by a third person at the direction, and for the pleasure of the child, the owner is not liable,[16] the contrary has been held and seems to be the correct view. Accordingly, where an automobile was kept for the pleasure of the grown daughter of the owner, and an accident occurred while the machine was temporarily being driven by another young lady, with the daughter's permission, the daughter and several of her friends being in the car at the time, the owner was held liable.[17]

Adult Child.—In respect of competent adult children, the liability of the parent can be based only upon the relation of master and servant, or, as it is sometimes termed, upon "agency." Liability cannot be cast upon a person merely because he owns a car that causes injury to another, or because he permits his son to drive the car whenever he wishes to do so. Liability arises from the relation of master and servant, and must be determined by the inquiry whether the driving at the time was within the authority of the master, in the execution of his orders, or the doing of his work.[18]

There must be some evidence that a child who is competent to operate an automobile was operating the same by authority of his father, as agent or servant of his father, before the latter can be held liable for his negligence—that the machine was being operated in connection with the father's business, or to carry out some wish or desire or purpose of the father,—it may be to furnish pleasure to the child.[19] Such authority may be found in actual presence of the father, in express or implied direction, or in a precedent course of conduct. If the act is within the general scope of authority conferred by the father, or in carrying out the enterprise for which the

(14) Guignon v. Campbell, Wash., 1914, 141 Pac. 1031.

(15) Birch v. Abercrombie, 74 Wash. 486, 133 Pac. 1020.

(16) Schumer v. Register, 12 Ga. App. 743, 78 S. E. 731.

(17) Kayser v. Van Nest, Minn., 1914, 146 N. W. 1091.

(18) Maher v. Benedict, 123 App. Div. 579, 108 N. Y. Supp. 228; Smith v. Burns, Ore., 1914, 142 Pac. 352; Erlick v. Heis, Ala., 1915, 69 So. 530.

(19) Linville v. Nissen, N. C., 1913, 77 S. E. 1096; Schultz v. Morrison, 154 N. Y. Supp. 257.

son has been commissioned, then the father may be liable even though he had no knowledge of the specific conduct in question and it was contrary to his direction. If the act is not done by the son in furtherance of the father's business, but in performance of some independent design of his own, the father is not liable.[20]

Where an accident occurred while an automobile was being operated by a chauffeur at the direction of the owner's daughter it was said that the owner was not liable simply because of the relationship, but that to render her liable there must have existed an authority from the mother to the daughter to do the act, or a subsequent ratification of it.[21]

A mother, riding in an automobile with her son, merely at his invitation, is not liable for his negligent operation of the car.[21a]

The plaintiff, in a personal injury action, was struck and injured by defendant's automobile while it was being driven by defendant's stepson, who was grown and married, and who occupied an apartment in the same building in which defendant lived. The defendant owned and maintained the automobile as a pleasure car for his family, and the stepson drove the car for defendant and his family at times, but did not have authority to get or use the car without permission from defendant or his wife. He had used it by express permission on a few occasions. On the day of the accident neither defendant nor his wife was at home, and the stepson took the car to go after his wife, and while returning home the accident happened. It was held that the stepson was liable, but that defendant was not.[22]

The fact that the agency is not a business one, and the services of the child not remunerative, does not affect the question of liability.[23]

Minor Child.—Aside from the question of agency or the relation of master and servant, in order to render a parent liable for an injury caused by the negligence of his minor child, it is essential that the parent might reasonably have anticipated the injury as a consequence of permitting the child to employ the instrument which produced the injury, and that the parent's negligence made it possible for the child to cause the injury complained of.[24]

Thus, if a parent should place his automobile in charge of a child of tender years, who is incompetent and unable on account of his youth to safely operate such a machine, he will be held liable for injuries caused thereby. But this liability is on account of his own negligence in intrusting his automobile to the child, and does not arise from any imputed negligence of the child.[25]

Where a parent purchased a large, heavy automobile for the use of his son, 11 years old and weighing 85 pounds, and the machine was kept at a garage subject to the boy's orders, the father paying the bills, and the boy was permitted to drive the machine whenever he wanted to, and he injured a pedestrian on a busy city street, along which he was recklessly driving at the time, it was held that the parent was liable.[26]

So, where a father permits his 16-year-old son to operate the father's car, in violation of a statute prohibiting persons under 18 years of age from operating automobiles, except under certain conditions, is liable for an injury caused by the son's negligent operation of the machine. Such a statute, in

(20) Smith v. Jordan, 211 Mass. 269, 97 N. E. 761.

(21) Carrier v. Donovan, 88 Conn. 37, 89 Atl. 894.

(21a) Anthony v. Kiefner, Kan., 1915, 150 Pac. 524.

(22) Smith v. Burns, Ore., 1914, 142 Pac. 352.

(23) Birch v. Abercrombie, 74 Wash. 486, 133 Pac. 1020.

(24) Allen v. Bland, Tex. Civ. App., 1914, 168 S. W. 35.

(25) Linville v. Nissen, N. C., 1913, 77 S. E. 1096; Ferris v. Sterling, 214 N. Y. 249, 108 N. E. 406.

(26) Allen v. Bland, Tex. Civ. App., 1914, 168 S. W. 35.

effect, declares that such persons do not possess the requisite care and judgment to run motor vehicles on the public highways without endangering the lives and limbs of others.[26a]

A petition which alleged that the defendant was a widow, having the exclusive control and custody of her minor unmarried daughter; that defendant was the owner of a certain automobile; and the daughter was riding in said automobile, having authority and command over its movements, when it was negligently caused to run down and injure the plaintiff, was held to state no liability on the part of defendant.[27]

A physician owned two automobiles, which he used in connection with his practice, and regularly employed a chauffeur to drive them. His son 18 or 19 years old, was permitted to use one of the machines for his own purposes when it was not otherwise in demand. On the occasion in question he was so using the machine, having with him two other young men, who were not members of his father's household, and ran down and killed a pedestrian. It was held that the father was not liable for the son's negligence at such time.[28]

Although a child may be a minor, if he is of such an age of discretion and has such ability to operate an automobile that it cannot be said that the father is negligent in permitting him to use his machine, then the father cannot be held liable, aside from the question of agency or the like, if the son takes the car with the father's permission and while operating it for his own pleasure negligently injures someone.[29]

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(26a) Schultz v. Morrison, 154 N. Y. Supp. 257.
(27) Schumer v. Register, 12 Ga. App. 743, 78 S. E. 731.
(28) Parker v. Wilson, Ala., 1912, 60 So. 150.
(29) Loehr v. Abell, Mich., 1913, 140 N. W. 926.

CHATTEL MORTGAGE—PRIORITY OF LIEN.

DRUMMOND v. GRIFFIN.

Supreme Judicial Court of Maine. Oct. 21, 1915

95 Atl. 506.

Where a livery stable keeper allows horses upon which he has a lien for food and shelter to be taken out and used in the ordinary manner by the owner, he loses his lien as against a mortgagee of the horses, who has no knowledge that they are boarded at his stable, since the temporary surrender of the horses gave the mortgagee a prior right, which from that time continued on without interruption.

SPEAR, J. On report. The case shows that the Franklin Laundry Company of Bangor, on April 11, 1913, took one horse, and at a subsequent date another horse, to the stable of Charles L. Griffin, the defendant, under a contract for food and shelter. The horses remained, under the contract, in the defendant's stable until July 20, 1914. Upon this date they were replevied by the plaintiff by virtue of a title conveyed to him by a mortgage from the laundry company to him, dated and recorded January 8, 1914. No question can be raised as to the plaintiff's right of action, for a breach of the condition of the mortgage. Accordingly the only issue is whether the defendant had, at the date of the replevin, preserved his lien.

[1] It is admitted that the plaintiff had no actual knowledge that the horses were boarded at the defendant's stable, until April 18, 1914. Nor do we think knowledge can be implied. During all the time the horses were kept in the stable the laundry company was permitted to use them in the ordinary way in the prosecution of its business. They were used before and after the date of the mortgage in the same way. The issue then is: Did the defendant, at the time the horses were replevied, have a lien on them for the amount due for their board, which accrued prior to the date of the mortgage? It seems to be well settled that he did not. The taking of the horses by the company for use in its business, from day to day, while for the time being depriving the defendant of his lien, would nevertheless revest him in his lien upon the restitution of the horses to his custody for a continuation of food and shelter, under his existing contract for so doing; but this rule does not apply in case of a mortgagee with whom no such contract exists and without notice. By the mortgage to him the plaintiff acquired a good title to the horses, subject to the defendant's lien.

But after this time the defendant let the horses go out of this custody into that of the company. This, against the plaintiff's right as owner under a recorded mortgage, was such a relinquishment of possession as extinguished and discharged the defendant's lien. The theory is that the surrender of the lien temporarily by the defendant gives the mortgage a prior right, which from that time on continues without interruption or discharge. Perkins v. Boardman et al., 14 Gray (Mass.) 481, seems to be directly in point. In this case the presiding justice ruled, under a contract between the owner and keeper of the horse that the keeper should have a lien on the horse until "she had eaten herself up," although used from day to day in the laundry business, that the temporary relinquishment of custody for the purpose of use did not defeat the lienor's right against a mortgage. But the court held otherwise, stating that permission to the mortgagor to take the horse into his possession and use it as he pleased in carrying on his business "as against the plaintiff having rights under his duly recorded mortgage was such a relinquishment of possession as extinguished and discharged the previously existing lien. The mortgage then became prior in right, and the incumbrance created by it continued without interruption, disturbance, or discharge from and after the time when this lien was lost; and the mortgagee thereby acquired a paramount right and title to the property."

[2] Upon April 18th, as before stated, the plaintiff had knowledge that the horses in which he held title under his mortgage were being boarded at the defendant's stable, from which his consent that they might be so boarded might be properly implied. But, when the plaintiff demanded the horses under his mortgage just prior to July 20th, the date of his writ, upon inquiry as to the amount due, the defendant claimed, not only the amount due for keeping the horses subsequent to April 18th, when the plaintiff may be regarded as having consented to their being kept by the defendant, but also the full amount due for keeping prior to that date and refused to accept any less sum.

[3] As before determined, it appears that the plaintiff could not be held for the sum demanded for keeping the horses prior to April 18th. The defendant refused to deliver the horses to the plaintiff on demand, unless he paid this sum. The plaintiff was therefore excused from making any tender of the amount which might have been due subsequent to April 18th before serving his writ. Bowden v. Dugan, 91 Me. 141, 39 Atl. 467. The plaintiff, accordingly, having title in the horses, had a right to their custody without further ceremony.

Judgment for the plaintiff.

NOTE.—*Lien of Livery Stable Keeper on Horses Used by Owner in His Business.*—It is said by Jones on Liens, § 698, that: "A livery stable-keeper does not necessarily lose his lien by delivering a horse to the owner for use by him." The case cited for this proposition did not involve any contest with any lien claimant, and that a livery stable-keeper claimed a lien on a showed merely that a livery stable-keeper claimed a lien on a horse, which was used every day, more or less, by the owner in his business as a paper-hanger. The suit was for replevin by the stable-keeper because the horse was not returned as usual after being used. Walles v. Long, 2 Ind. App., 202, 28 N. E. 101.

In Young v. Kimball, 23 Pa. St. 193, it appears that the statute gave both to inn-keepers and stable-keepers a lien, and it was pointed out by the court that the arrangement ordinarily with the latter contemplates that a horse is to be used as needed.

But in State ex rel. v. Shevlin, 23 Mo. App., 593, this principle was applied in a contest between chattel mortgagee and a livery stable-keeper. Thompson J. said: "We think that the lien conferred by the statute subsists, even as against third persons without notice, while the horse is boarded in the stable of the lienor, although it may with his consent, be used during the day by the owner in his business. To hold otherwise would be to construe the statute so as to deprive stable-keepers of the protection which the legislature probably intended to give them; since, as is well known in most cases where horses are boarded, the owner is allowed to use them in his business during the day. . . We are of the opinion that every person is bound so far to take notice of the statute, that, when he is about to become the purchaser of a mortgagee of a horse found upon the street in the custody of its owner, it is incumbent upon him to make inquiry as to the place where the horse is boarded and whether anything is due for its keeping."

In McGlasson v. Hennessy, 161 Ill. App., 387, the view taken in the Shevlin case is expressly approved.

In Caldwell v. Tutt, 78 Tenn. (10 Lea.) 258, 43 Am. Rep., 307, the lien was upheld as against a levy upon execution. It was said the creditor "must take the property *cum onere*, as the owner held it at the time of seizure."

In Welsh v. Barnes, 5 N. D., 277, 65 N. W., 675, the lien was held good against that obtained by an attaching creditor. It was said: "The statute could not have intended to allow the owner to destroy the lien of the stable-keeper, while having possession of the horse on the street during the day, by selling or mortgaging it to a stranger without notice of the lien."

In Weber v. Whetstone, 53 Neb., 371, 73 N. W., 695, it was said: "The rule *Caveat Exemptor* applies to one who purchases personal property, and * * * he cannot protect himself as against an agister's lien simply because he is an innocent purchaser of the property without notice of the lien. The agister does not lose his lien upon

the property simply because of the fact that it is taken from his possession without his consent and sold to another who has no notice of the lien."

These cases go to show, that the lien is not removed even as to a third person without notice, either where the possession is wrongfully lost, or where it is consented to for a temporary purpose, if this purpose is in comtemplation of the statute. With livery stable-keepers given a lien for board of horses the statute does contemplate that the owner may use the property that is being boarded. C.

ITEMS OF PROFESSIONAL INTEREST.

HON. WILLIAM H. STAAKE, PRESIDENT NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

The picture on our front cover page this week is that of William H. taake, who was elected president of the National Conference of Commissioners on Uniform State Laws at the Salt Lake City meeting.

Judge Staake, who presides over the Court of Common Pleas, No. 5, of the County of Philadelphia, was born in Brooklyn, N. Y., December 5, 1846; graduated from the Law School of the University of Pennsylvania, and admitted to the bar of Philadelphia March 14, 1868.

Judge Staake became at once an active practitioner in the county and state courts of Pennsylvania until his appointment to the bench May 1, 1906. He has always taken a very active interest in professional movements, and at one time served as a member and as chairman of the Board of Law Examiners of Philadelphia. Since 1901 he has been chairman of the Pennsylvania delegation of the Commission on Uniform State Laws, and has been chairman of the Executive Committee of that association from 1902 until 1914. He has also served since 1901 as secretary of the Pennsylvania Bar Association, and was a delegate to the National Divorce Congress of 1906, and was one of the Commissioners appointed to codify the divorce laws of Pennsylvania. He was chairman of the Library Committee of the venerable Law Association of Philadelphia for many years, and since 1899 has been secretary of the board, having charge of the historical museums and collections of Independence Hall.

In addition to this large participation in matters of public interest, Judge Staake has also served as a member of the Municipal Civil Service Examining Board of Philadelphia; Vice-President of the Lawyers' Club of Philadelphia; member of the Advisory Board of the Philadelphia Home for Incurables; and Treasurer of the Foreign Mission Board of the General Council of the Evangelical Lutheran Church.

Judge Staake's most interesting contribution to legal jurisprudence has been as a member of the Commission on Uniform State Laws, and his elevation as Chairman of the National Commission is a proper acknowledgment of his very valuable assistance in the labors of that organization.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS' ASSOCIATION, COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 88.

An attorney discovers through his professional relations with a client facts which convince him that his client is mentally incompetent and is about to bring financial ruin upon himself and family through his improvident and reckless business transactions.

1. Can the attorney properly accept employment from the client's wife to have him legally decreed incompetent?

2. If the answer be in the affirmative, can the attorney properly utilize in behalf of the wife's application the knowledge of the husband's affairs and acts which he acquired during his employment by the husband?

3. Can the attorney in legal procedings instituted by the wife, to have her husband legally declared incompetent, testify concerning said affairs and transactions?

Would it make any difference in the answers, or any of them, if it were assumed that the attorney believed or even knew at the time of his employment by the husband that he was mentally incompetent, and accepted the employment with the knowledge and consent of the wife in the belief that he could thereby so advise the incompetent as to prevent loss through his ill-advised and reckless conduct?

Answer No. 88.—In the opinion of the Committee, subdivision 1 and subdivision 2 of the question should be answered in the affirmative, and subdivision 3 of the question should be answered by this Committee, because it presents a pure question of law. (See Secs. 835, 836, Code of Civ. Proc., and in *re Cunnion*, 201 N. Y., 123.) The Committee is also of the opinion that the last paragraph of the question should be answered in the negative.

In making the above answer, the Committee has assumed that the lawyer in question is

acting from good motives in the way that he deems best for the true interests of the supposed incompetent, and that he has no reasonable doubt as to his client's incompetency.

QUESTION No. 89.

In the opinion of the Committee, is the following advertisement by a lawyer proper:

"Will handle a few deserving law cases without any fees except actual courts costs and expenses. P. O. Box——"?

Answer to Question No. 89.—In the opinion of the Committee the advertisement is improper. Such solicitation of employment, whether gratuitous or not, is derogatory to the dignity of the profession, and too readily opens the door to imposition. The Committee again calls attention to Canon 27 of the Canons of Ethics of the American Bar Association.

QUESTION No. 90.

A and B come into the office of C, an attorney, and A employs him to draft a deed conveying certain property to B. Before the deed is drawn, C discovers that the title to the property is defective. Should he divulge this fact to B, who has nothing to do with his employment

Answer No. 90.—In the opinion of the Committee, the question implies that B reposes trust and confidence in C as a lawyer; and in effect that the lawyer is asked to represent both parties. Therefore, in the opinion of the Committee, C should disclose the defect to both A and B. If C is not acting for B, the Committee is of the opinion that C should only continue to act for A after advising B to secure separate counsel.

BOOK REVIEWS.

AMERICAN ANNOTATED CASES, 1915 C.

In 81 Cent. L. J. 336, we gave a review of 1915 A and 1915 B of this excellent series, which was the successor of various prior notices of the same work. The plan as following and developing the excellent selection of cases, important as illustrating the unfolding of new problems in general law and their judicious annotation as shown in the trinity series, is continued in this number.

This work, as an example of eclectic reports, has a very high place in American legal literature and the exhaustive and illuminative annotations, referring back as it does to what has been done in predecessor volumes. The current volume is of the usual attractive appearance and comes from Bancroft-Whitney Co., San Francisco, and Edward Thompson Co., Northport, L. I., N. Y.

SCHOULER'S WILLS, EXECUTORS AND ADMINISTRATORS, 5th EDITION.

James Schouler, LL. D., is to the profession too well-known to need any formal introduction. His works on various subjects have been regarded as standards and this work, with the first volume on Wills, and the second on Executors and Administrators, should be welcomed by the profession.

The author states that this work covers the entire range of law on these subjects and that the authorities in this re-editing are down to date. We have in its presentation not only a well-written book but one useful to the everyday practioner in the most important lines of practice. The text and the footnotes in these two volumes have been gone over carefully and altered, omitted or expanded as appeared desirable, and full scope has been given to the new material added.

The volumes are very handsome and of durable appearance in their binding of law buckram, and come from the well-known law book house of Matthew Bender & Company, Albany, N. Y., 1915.

AMERICAN STATE TRIALS—4 VOLUMES.

Prof. John D. Lawson, LL. D., the editor of American Law Review and author of many text books, and contributor to journals of law and jurisprudence, presents a work for America covering a similar field as by the great English work is covered in "Howell's State Trials," and calls it not Lawson's State Trials, but American State Trials." The author's modesty in this will not perhaps be permitted its desire, because we believe this work will rather be known by the name suggested above by us than by that its author has chosen.

Just as Howell's State Trials and the French *Causes Celebres* preserve in enduring record many things in the habits, customs, prejudices and forms of procedure and generally the intimate life of England and France that would escape the eye of the historian, so this American work shows the undercurrent of American history from early Colonial times to this modern time.

The author well says in his preface to Volume 1 that the trial of Ury, an alleged Catholic priest, gives not only a good view of the insane fever which sometimes seizes a whole community, as it did again in the Prosecution of the Massachusetts Witches, but likewise a

most trustworthy of how Protestant intolerance succeeded a long period of Roman Catholic bigotry. The victim (Ury) was a victim of the current hatred of everything which smacked of the Pope. The lawyer will note the kind of evidence which was admissible in the courts of New York a hundred and seventy years ago, and which recalls Mr. Justice Jeffreys and the Bloody Assize."

The material for this collection is well selected, not only to show things of interest in the habits and prejudices of the people, but also it exhibits well the modes of proceedings in the different eras of our national and colonial life. We know of but one book, which is called a history, that compares with this collection in giving that insight into what lay beneath the surface of our history, and that is McMaster's "History of the People of the United States." Therein we do not read of great battles and diplomatic failures and triumphs, but we are introduced to the life of the people—we see how they lived and moved and had their being. Little incidents are given as typifying their daily intercourse and from them we learn to philosophize about the growth and increasing enlightenment and tolerance and loyalty of the pioneers of our civilization and the spirit that has leavened the mass of immigration to our shores.

We commend this excellent collection to our readers and predict for it a wide acceptance among lawyers and laymen alike.

These volumes appear in attractive form, the reports of cases are exceedingly full and often the arguments of counsel are given *in extenso*. They issue from the publishing house of F. H. Thomas Law Book Co., St. Louis, 1914, 1915.

HUMOR OF THE LAW.

The old fable of the lawyers and the oyster, in which the ownership of an oyster being contested, the lawyers ate the oyster and gave a shell to each of the litigants, is matched by a story of a lawsuit which a Russian journal relates as entirely authentic.

In a city of Poland, it appears, two men came into court with a suit over the ownership of an umbrella which had been left in a restaurant. Each one introduced evidence to prove that the umbrella was his.

Being unable to match the wisdom of Solomon by dividing the umbrella between them, the judge postponed the case. Pending its decision the umbrella was left in the judge's private room.

Later, as he left the court to go home, the judge found that the weather was rainy. He went back to his room, took the umbrella which was in litigation, and spread it over his head in the street.

On his way home he went into a restaurant, and left the umbrella on the rack; and when he was ready to leave the place, he found that it had been taken away by some unknown customer.

Then he bought another umbrella and took it to his court-room. When the case came up the litigants were confronted with it, and neither was able to identify it as his own. The court thereupon fined them both for invoking the law on a frivolous pretext, and they departed empty-handed and decidedly "non-suited."

Judge Parry, in a recent article on "Rufus Choate, Advocate," says on occasion Choate would meet with his Sam Weller. Defending a prisoner for theft of money from a ship, a witness was called who had turned states' evidence and whose testimony went to prove that Choate's client had instigated the theft.

"Well," asked Choate, "what did he say? Tell us how and what he spoke to you."

"Why," said the witness, "he told us there was a man in Boston named Choate and he'd get us off if they caught us with the money in our boots."

During the trial of a recent case in Chicago, one of the lawyers was complimented upon the strength of his address to the jury.

"Whatever strength my speech had," he explained, "lay in the strength of my cause. With a cause so powerful one couldn't very well speak badly. Like the case of an old Yankee lawyer I once knew, it was a winner. This old chap said gayly to an associate counsel:

"'We'll win; we're bound to win. There is only one case against us. The only report of that case is in my library, and I am sitting on it now.'"

NOTICE.

I will not be responsible for any debts or contracts made by my wife, Mrs. Stella Ross.

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NOTICE.

And that is why I am now in business at the Little Cash Store. Bring your little cash to the "Little Cash Store," where it is needed and appreciated. Phone 867.

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—Monroe News-Star.

WEEKLY DIGEST

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Alabama.....19, 54, 62, 69, 87, 99
Arkansas.....31, 34, 46, 64, 74, 78, 84
California....1, 38, 45, 47, 60, 73, 75, 76, 106, 113, 114, 115, 116.
Georgia....21, 24, 40, 49, 55, 61, 68, 70, 80, 96, 110, 118.
Maine.....77, 83, 85, 105, 108
Maryland.....20, 23
Missouri.....4, 101
Nevada.....48
New Jersey.....50, 56, 111
New York.....5, 9, 26, 32, 43, 51, 52, 95, 117
Ohio.....104
Oklahoma.....6, 33, 42, 58, 66, 72, 97
South Dakota.....63, 88, 98, 100
Tennessee.....18, 37
Texas.....21, 29, 30, 67, 79, 109
U. S. C. C. App.....13, 35, 36, 39, 71, 107
United States D. C.....2, 3, 7, 8, 10, 11, 12, 14, 15, 16, 17, 25, 41, 59, 89, 112.
Utah.....27, 28, 91, 102
Washington.....44, 53, 57, 65, 81, 82, 86, 90, 93, 103
West Virginia.....92, 94

1. **Account Stated**—Compromise.—The compromise of a claim or demand, even if of doubtful validity or value, is good consideration for an account stated, and when action is brought thereon, the defendant will not be heard to answer that the claim or demand was unjust or invalid.—Gardner v. Watson, Cal., 150 Pac. 994.

2. **Admiralty**—Rules.—Discovery will not be granted under the admiralty rules as to messages, the original or copies of which are in the movant's possession, to enable the movant to establish the authority of the sender and the receipt of the answers.—The Eros, U. S. D. C., 224 Fed. 194.

3. **Aliens** — Deportation.—The Constitution does not require that an alien ordered deported shall be granted the right to appear by counsel on an appeal to the Commissioner of Labor.—Ex parte Chin Quock Wah, U. S. D. C., 224 Fed. 138.

4. **Arbitration and Award**—Parties.—Where articles of arbitration gave the arbitrators power over a fund deposited in the hands of a third party, and such party was directed, by a judgment based upon the award, to pay out the money, it is immaterial that such party was not a party litigant.—Beckett v. Wiglesworth, Mo. App., 178 S. W. 898.

5. **Attorney and Client**—Lien.—An attorney engaged by a director of a corporation to sue to recover property of the corporation misappropriated by an officer held entitled to a lien on the property recovered.—Schoenherr v. Van Meter, N. Y., 109 N. E. 625, 215 N. Y. 548.

6. **Bail**—Murder.—A mere conflict of testimony on a material issue does not alone entitle a prisoner held for murder to be admitted to bail, unless the evidence, considered as a whole, raises a well-founded doubt of guilt, bail will be denied.—Ex parte Leggett, Okla. Cr. App., 150 Pac. 1121.

7. **Bankruptcy**—Chattel Mortgage. — Chattel mortgagee petitioning for proceeds of sale by trustee in bankruptcy held liable for expense of sale, including rent of premises, where property was kept, but not for other charges or expenses, nor attorney's fees.—In re Johnson, U. S. D. C., 224 Fed. 180.

8.——Conditional Sale.—Under Code Ga. §§ 3260, 3319, relating to record of conditional sales, held that the record of a conditional sale was not necessary as against an unsecured creditor of the bankrupt buyer.—In re Brown Wagon Co., U. S. D. C., 224 Fed. 266.

9.——Courts.—While the state court may be without power to take a fund from possession of a court of bankruptcy, yet, where property is subject to a lien, it will be presumed that the court of bankruptcy will give effect to the judgment of the state court.—Schoenherr v. Van Meter, N. Y., 109 N. E. 625, 215 N. Y. 548.

10.——Jurisdiction.—District Court in Georgia adjudging bankrupt a contractor for an owner residing in South Carolina, has no jurisdiction of an action by the trustee against the owner and other nonresidents to determine the validity of orders on the owner given by the contractor to nonresidents.—In re Smith Const Co., U. S. D. C., 224 Fed. 228.

11.——Manufacturer.—A corporation generating electricity and transmitting it over its lines to customers for a consideration is not engaged in manufacturing or mercantile pursuits, within Bankr. Act July 1, 1898, § 4, as amended by Act Feb. 5, 1903, § 3.—In re Wilkes-Barre Light Co., U. S. D. C., 224 Fed. 248.

12.——Manufacturer.—A corporation engaged principally in manufacturing is subject to adjudication under the Bankruptcy Act as it stood on September 21, 1908.—In re Culgin-Pace Contracting Co., U. S. D. C., 224 Fed. 245.

13.——Partnership.—That the referee, without complying with General Order in Bankruptcy, No. XXIII (89 Fed. xi, 32 C. C. A. xxvi), ordered an unadjudicated member of a partnership to file a schedule and inventory within 19 days, instead of 10 days, held not fatal to an order confirming such order.—Armstrong v. Fisher, U. S. C. C. A., 224 Fed. 97.

14.——Partnership.—No partnership can be compulsorily adjudicated a bankrupt in which any partner appears to be solvent to the extent of having a surplus of property over his personal debts and those for which he is liable as a member of the firm.—In re Kobe, U. S. D. C., 224 Fed. 106.

15.——Preference.—A transfer by an insolvent, a few days before his bankruptcy, of property to be manufactured and delivered to a city, made to an assignee of the contract, held void as against the trustee in bankruptcy.—In re Webb Co., U. S. D. C., 224 Fed. 258.

16.——Reclamation of Securities.—The referee in bankruptcy has power to fix a time limit for customers and creditors of a bankrupt stockbroker to file petitions for the reclamation of securities and claims to establish liens on cash in possession of the trustee.—In re Gay & Sturgis, U. S. D. C., 224 Fed. 127.

17.——Recorded Contract. — An unrecorded contract held to be a sale of wagons, not a consignment for sale, so that the trustee in bankruptcy of the buyer was entitled to possession thereof.—In re M. L. B. Sturkey Co., Inc., U. S. D. C., 224 Fed. 251.

18. **Banks and Banking**—Ultra Vires.—A contract between a national bank and the promoter of a building corporation, whereby the promoter was to purchase from the bank stock subscribed for by it, held not ultra vires of the bank.—Fourth Nat. Bank of Nashville v. Stahlman, Tenn., 178 S. W. 942.

19. **Bastards**—Good Character.—In a bastardy proceeding, the good character of the prosecutrix for virtue and chastity is not in issue, and evidence thereof is improperly received.—Smith v. State, Ala. App., 69 So. 406.

20. **Boundaries**—Survey.—To assume that a stone not called for in any of the descriptions and not explained beyond the then owner's statement that it was a boundary stone was the beginning of a certain line or tract, and to then run the lines in dispute, held an improper method of survey.—Andrews v. Pitts, Md., 95 Atl. 203.

21. **Brokers**—Procuring Cause. — A broker procuring a contract for his principal for the exchange of land providing that each party should furnish an abstract of merchantable title, on failure of the other party to furnish such abstract so that the contract was not carried out, was not entitled to his commission.—Stanford v. Wilie, Carpenter McClelland, Tex. Civ. App., 178 S. W. 991.

22. **Carriers of Live Stock**—Special Contract. —Where a shipper of live stock made no attempt to comply with a special contract of carriage which reduced the carrier's liability and required a written claim of loss before the stock was mingled with other stock, the carrier is not liable.—Kent v. Central of Georgia Ry. Co., Ga., 85 S. E. 1017.

23. **Carriers of Passengers**—Measure of Damages.—Where the physical injury to a woman passenger was very slight, an award of $400 damages for injuries and indignities in being hit in the eye by a paper wad thrown by the conductor of a trolley car is excessive, and should be reduced to $50.—Sweeney v. Cumberland County Power & Light Co., Me., 95 Atl. 209.

24.——Round-Trip Ticket.—A railroad company in selling round-trip tickets at a reduced fare may limit the time in which the coupon for return passage may be used, and after the expiration of that time may refuse to honor the coupon though the passenger offered to pay a sum in addition.—Samples v. Georgia & F. Ry. Co., Ga., 85 S. E. 1002.

25. **Commerce**—Special Tax.—Act. Cong. Dec. 17, 1914, imposing a special tax on dealers in opium, and requiring dealers to register with collectors of internal revenue, held within the power of Congress.—United States v. Brown, U. S. D. C., 224 Fed. 135.

26.——State Law.—Where a railroad operated ships in interstate commerce unconnected with its line, held that the state laws relating to employes govern, and not the Federal Employers' Liability Act of 1908.—Jensen v. Southern Pac. Co., N. Y., 109 N. E. 600, 215 N. Y. 514.

27. **Common Carriers**—Eminent Domain.—A common carrier may condemn a way to reach its car barns necessary for the repair of its cars and locomotive; such a way being as necessary for its business as a public carrier as a right-of-way.—Whitmeyer v. Salt Lake & O. Ry. Co., Utah, 151 Pac. 48.

28. **Constitutional Law**—Closing Ordinance.—Laws 1915, c. 23, §§ 1-3, fixing 6 p. m. as the closing hour for mercantile and commercial houses in cities of 10,000 or more, and exempting drug stores and provision houses, held to violate the constitutional right to enjoy, acquire and possess property.—Saville v. Corless, Utah, 151 Pac. 51.

29.——Employers' Liability Law.—Employers' Liability Act held to delegate legislative functions to the employer in violation of the federal Constitution and of the provision of the Texas Constitution, vesting in the legislature the exclusive power to make laws.—Middleton v. Texas Power & Light Co., Tex. Civ. App., 178 S. W. 956.

30.——Foreign Corporation.—A foreign insurance company cannot assail the constitutionality of Rev. St. 1911, art. 4876, since by the terms thereof it is deemed to have consented to its provisions.—Reliance Ins. Co. of Philadelphia v. Dalton, Tex. Civ. App., 178 S. W. 966.

31.——Public Schools.—Laws 1911, p. 299, making appropriations for state aid of high schools, is discriminatory in so far as it prohibits any aid to high schools in cities of over 3,500 inhabitants and gives all of its aid to rural high schools.—Dickinson v. Edmondson, Ark., 178 S. W. 930.

32.——Workmen's Compensation Act. — That Workmen's Compensation Act, exempting all those complying with it from further liability, does not compel an employe, injured within admiralty jurisdiction, to elect between his remedy thereunder and that in admiralty held not a denial of the equal protection of the laws.—In re Walker, N. Y., 109 N. E. 604, 215 N. Y. 529.

33. **Contracts**—Breach.—The right to sue for damages for breach of a contract may be waived by an unqualified acquiescence in the breach by the party not in default himself.—Croak v. Trentman, Okla., 150 Pac. 1088.

34.——Consideration.—Defendant's promise to pay plaintiff a sum of money in consideration of his waiving his rights to purchase defendant's electric light plant held supported by a consideration.—Skinner v. Fisher, Ark., 178 S. W. 922.

35.——Construction.—It is only when parts of a contract are so repugnant that no rational interpretation will render them effective and accordant that any part must perish.—Rushing v. Manhattan Life Ins. Co. of New York, U. S. C. C. A., 224 Fed. 74.

36.——Public Policy.—A contract of partnership to bid for mail contracts and to divide the net profits of the same if obtained is not illegal, where it does not appear that its purpose or effect was to prevent or lessen competition in bidding.—Hegness v. Chilberg, U. S. C. C. A., 224 Fed. 28.

37.—Unilateral.—A contract between a national bank and the promoter of a building corporation, whereby the latter agreed to purchase stock from the bank in consideration that the bank would pay its subscription, held not unilateral.—Fourth Nat. Bank of Nashville v. Stahlman, Tenn., 178 S. W. 942.

38. **Corporations** — Election of Officers.—Where committee on elections possessed the sole right to determine how long the polls at a stockholders' election for directors should remain open, it did not abuse its discretion in keeping them open after the hour announced in the public notice of election.—Clopton v. Chandler, Cal. App., 150 Pac. 1012.

39.——Fiduciaries. — Directors, in selling bonds, held to act in a fiduciary capacity, and transaction whereby they obtain such bonds must be free from fraud or the suspicion of unfair dealing.—Idaho-Oregon Light & Power Co. v. State Bank of Chicago, U. S. C. C. A., 224 Fed. 39.

40.——Solvency.—Where a solvent corporation as a going concern declares dividends which are paid out of the capital stock and are received by the shareholders in ignorance, the trustee in bankruptcy after the corporation's insolvency cannot recover such dividends. —Carlisle v. Ottley, Ga., 85 S. E. 1010.

41. **Conversion**—Sale.—Where purpose of conversion fails or becomes unnecessary before sale, the power to sell ceases; but, if it only partially fails or as to one or more objects, the conversion must still be made.—Meekins v. Branning Mfg. Co., U. S. D. C., 224 Fed. 202.

42. **Counties**—Illegal Compensation. — Where an officer receives from the county fees or compensation not authorized by law, the county may recover same, though no appeal was taken from the action of the board allowing same.—Hughes v. Board of Com'rs of Oklahoma County, Okla., 150 Pac. 1029.

43. **Criminal Law**—Inference.—In a prosecution for murder, the state's failure to call the son of deceased, who was deficient in understanding and not able to talk intelligently, held to raise no inference adverse to the state.—People v. Roach, N. Y., 109 N. E. 618.

44.——Offense at Common Law.—Where the offense of incest was denounced by statute, a

prosecution could not be upheld under the common law.—State v. Bielman, Wash., 150 Pac. 1194.

45. **Damages**—Action for.—The mere probability that a certain event would have happened upon which a claim of damages is predicated will not support such claim nor furnish the foundation for an action for such damages. —McQuilken v. Postal Telegraph Cable Co., Cal. App., 151 Pac. 21.

46. **Depositaries**—Estoppel.—A bank designated as county depositary on an invalid bid is, under the principle of estoppel, liable for interest on the county funds deposited, as though the appointment was valid.—State v. Citizens' Bank & Trust Co., Ark., 178 S. W. 929.

47. **Descent and Distribution**—Mining Claim. —Possessory right of a locator of a mining claim is property, and on his death passes to his heirs by descent, and is subjected to administration.—Wallace v. Hudson, Cal., 150 Pac. 988.

48. **Divorce**—Appeal and Error.—On appeal from a judgment of divorce, attorney's fees pending appeal may be ordered to be paid by appellant within a specified time on penalty of dismissal of the appeal.—Buehler v. Buehler, Nev., 151 Pac. 44.

49.——Custody of Child.—A divorce decree awarding custody of a child of the marriage is not conclusive in habeas corpus proceedings as to the rights of the spouses, where circumstances pertaining to the fitness of the parent to whom the child was awarded, arising after the decree, are involved.—Milner v. Gatlin, Ga., 85 S. E. 1045.

50.——Desertion.—That a husband was inattentive to his wife, left her alone on holidays and during the evenings, is no ground for her deserting him; such conduct not constituting a constructive desertion.—Hague v. Hague, N. J. Ch., 95 Atl. 192.

51.——Judgment.—Where the marriage status is dissolved by a divorce, and the judgment provides for annual alimony, the wife's right to collect alimony due and unpaid at the time of her death may be enforced by her personal representatives.—Van Ness v. Ransom, N. Y., 109 N. E. 593.

52. **Estoppel**—Grantor.—Defendant, who once owned the premises, and at whose direction his grantee, in a deed given as security conveyed them after the debt was paid, reserving to him the right of fishing thereon, held estopped to set up his own title and show that he was not a stranger to the title, so that the reservation would be valid.—Tuscarora Club of Millbrook v. Brown, N. Y., 109 N. E. 597, 15 N. Y. 543.

53.——Testimony in Former Trial.—Consignee of package of money, who knew that sending bank claimed ownership thereon subsequent to its deposit in the mail, and who testified for it as against the assignee of the one alleged to have stolen it, held estopped from claiming title thereto as against the accused or his assignee.— Masterson v. Union Bank & Trust Co., Wash., 150 Pac. 1126.

54. **Evidence**—Presumption.—There is a presumption of law that postal authorities delivered registered mail and that the person who signed the receipt had authority. Hence the return postal registry receipt is admissible in evidence.—Farmers' Mut. Ins. Ass'n of Alabama v. Tankersley, Ala. App., 69 So. 410.

55. **Executors and Administrators**—Blanks in Deeds.—Where an administrator, pursuant to an order authorizing a private sale of land, leaves blanks in the deed for the names of the grantee and the instrument is afterwards filled out by the attorney of the heirs of the estate without the knowledge of the purchaser, the deed will pass title.—Bowen v. Gaskins, Ga., 85 S. E. 1007.

56. **Fraudulent Conveyances** — Burden of Proof.—Where a husband who was indebted made deposits in the name of his wife, and on her death she left her property to him in the form of a spendthrift trust, he has the burden as against his creditors, of proof that such moneys belonged not to him but to his wife.— Mount v. Chamberlin, N. J. Ch., 95 Atl. 180.

57.——Existing Creditor.—An "existing creditor" is one having an existing equity; the term implying an existing right to future payment.— Peterson v. Rankin, Wash., 150 Pac. 1187.

58. **Guardian and Ward**—Notice.—A purchaser from the purchaser at a guardian's sale must take notice of the guardian's authority to make the sale, and, if sufficient facts appear to put a reasonably prudent man on inquiry, will be charged with actual notice that the first purchaser was the guardian's wife.—Burton v. Compton, Okla., 150 Pac. 1080.

59. **Habeas Corpus**—Discharge of Writ.— Where the Secretary of Labor heard an appeal from an order deporting a Chinese, pending habeas corpus proceedings for his release because his appeal was not heard by an authorized officer, the writ will be discharged.—Ex parte Cning Hing, U. S. D. C., 224 Fed. 261.

60. **Homestead**—Estoppel.—Where a husband was absolutely entitled to the homestead of his wife, held that he was not, though he for a time claimed under her will, estopped to assert his paramount rights, where the rights of no third persons intervened.—Williams v. Williams, Cal., 151 Pac. 10.

61. **Husband and Wife**—Alimony.—Where a wife's suit for alimony had never been finally disposed of and the consent order had not been modified by proper proceedings in the suit wherein it was granted, an independent petition, after the husband obtained the divorce, in which there was no provision for alimony to revoke the order, will be denied.—Higgs v. Higgs, Ga., 85 S. E. 1041.

62. **Indictment and Information**—Demurrer. —In prosecutions for perjury, that the offense on the trial of which the perjury was committed was perpetrated outside of the territorial jurisdiction of the court must be taken advantage of by a request for the affirmative charge, and cannot be taken by demurrer to the indictment. —Thomas v. State, Ala. App., 69 So. 413.

63. **Infants**—Equity.—In an action to quiet title as against the claims of mortgagees under mortgages absolutely void because made in the mortgagor's infancy, plaintiff, a purchaser from the infant, would be required to do equity as a pre-requisite to equitable relief.—Gruba v. Chapman, S. D., 153 N. W. 929.

64.——Guardian ad Litem.—A proceeding by a guardian for sale of his ward's real estate is not an adversary proceeding, and the minor is not a necessary party, and a guardian ad litem need not be appointed for him.—Watts v. Hicks, Ark., 178 S. W. 924.

65. **Injunction**—Jurisdiction.—The court has no jurisdiction to grant a mandate to compel the superintendent of the state reformatory in his official capacity to destroy pictures of plaintiff while an inmate thereof, taken under implied authority of law and forming part of the records of the institution.—Hodgeman v. Olsen, Wash., 150 Pac. 1122.

66. **Insurance**—Agency—Where a soliciting agent for an insurance company agreed with applicant that he should have until April 23d to cancel the policy if he wished and have premium note returned, but fraudulently inserted in the application April 1st, the insured could show such facts in discharge of the note. —Phipps v. Union Mut. Ins. Co., Okla., 150 Pac. 1083.

67.——Estoppel.—An assignee of a fire insurance policy held precluded from claiming that the building was not properly classified and that the provisions in the policy in regard to additional insurance were invalid.—Reliance Ins. Co. of Philadelphia v. Dalton, Tex. Civ. App., 178 S. W. 966.

68.——Surrender of Value.—An insured has no power, with reference to loans and acceptance of surrender value after payment of three full premiums, to surrender a policy during the first year of its existence, without the beneficiary's consent.—Roberts v. Northwestern Nat. Life Ins. Co., Ga., 85 S. E. 1043.

69.——Waiver.—Insurer, which had notice that the property was incumbered, but acted so as to induce the insured to believe it was in force, held to have waived the right to claim

a forfeiture of the policy on that ground.—Farmers' Mut. Ins. Ass'n of Alabama v. Tankersley, Ala. App., 69 So. 410.

70. **Judgment**—Action.—Where money recovered in a legal action for a particular person is paid over to him, the nominal plaintiff is not entitled to demand that such money pass through his hands, and suit cannot be maintained against the beneficiary of his attorneys.—Allen v. Napier, Maynard & Plunkett, Ga., 85 S. E. 1013.

71.——Nunc Pro Tunc.—Judgments nunc pro tunc are sustained to prevent prejudice through delay caused by act of court or course of judicial procedure, and delay must not be attributable to the party in whose favor the principle is resorted to.—In re Finks, U. S. C. C. A., 224 Fed. 92.

72. **Landlord and Tenant**—Pasturage.—On breach of a landlord's farm lease contract to give the tenant pasture for all his stock, the tenant may recover as damages the amount reasonably expended to procure like pasturage, together with the expense of transferring the stock.—Hill v. White, Okla., 150 Pac. 1051.

73. **Libel and Slander**—Repetition.—One who utters a slander is not responsible either as on a distinct cause of action or in aggravation of damages for repetition, without his authority, by others over whom he has no control, who thereby render themselves liable to him slandered.—Adams v. Cameron, Cal. App., 150 Pac. 1005.

74. **Mandamus**—Parties.—One having a special interest in the publication of a legislative act may institute mandamus against the secretary of state to compel its publication among the acts of the Legislature.—Arkansas State Fair Ass'n v. Hodges, Ark., 178 S. W. 936.

75. **Master and Servant**—Independent Contractor.—A prospective lessee, who employed an independent contractor to paint signs on the walls of a building in process of construction, held not liable for injuries to an employe of the general contractor.—Schmidlin v. Alta Planing Mill Co., Cal., 150 Pac. 983.

76.——Lex Loci.—Where it was not shown or alleged, in an action by a Mexican sailor for personal injuries sustained on a British ship while at a wharf within the state, that the contract of employment was made outside the state, the state law, and not the law of Great Britain, was applicable.—Faras v. Lower California Development Co., Cal. App., 151 Pac. 35.

77.——Negligence.—The master's order to a minor servant to do more dangerous work than that which the contract of employment provided, without proper instruction, and his allowing the servant to grasp the clearing bar of a mowing machine while in operation to clear it of grass, was negligence.—Boutotte v. Daigle, Me., 95 Atl. 213.

78.——Rules and Regulations.—A direction that plaintiff repair a motor car on a particular day held not to authorize him to test it on the track in violation of the company's rule that testing should not be done at night.—St. Louis, I. M. & S. Ry. Co. v. De Lambert, Ark., 178 S. W. 926.

79. **Mines and Minerals**—Abandonment.—"Abandonment," with reference to oil contracts and leases, is the relinquishment of a right resting on the intention of the parties, while "forfeiture" does not rest upon an intent to release the premises, but is an enforced release.—Fisher v. Crescent Oil Co., Tex. Civ. App., 178 S. W. 905.

80. **Monopolies**—Jurisdiction.—The superior court has no jurisdiction to regulate the price of a commodity made and sold in the state by a manufacturing corporation, though such corporation manipulates prices to secure a monopoly.—Southern Ice & Coal Co. v. Atlantic Ice & Coal Corporation, Ga., 85 S. E. 1021.

81. **Mortgages**—Protection of Property.—The rule that a mortgagee may recover money paid out to protect the legal title does not apply where the mortgagee, so far as third parties are concerned, is the mortgagor as well.—Peterson v. Rankin, Wash., 150 Pac. 1187.

82. **Municipal Corporations**—Ordinance.—A municipal ordinance prohibiting taxicab drivers from soliciting trade at certain times and places held not to render them liable to arrest while at such places at other times.—Seattle Taxicab & Transfer Co. v. City of Seattle, Wash., 150 Pac. 1134.

83. **Negligence**—Attractive Nuisance.—The doctrine of attractive nuisances has never been adopted in this state, nor would a telegraph pole and a guy wire in a schoolhouse yard be within the doctrine.—McMinn v. New England Telephone & Telegraph Co., Me., 95 Atl. 210.

84.——Intoxication.—The fact that a person is intoxicated when he is injured does not of itself show such contributory negligence as will defeat recovery for such injury, but may be considered in determining whether his intoxication contributed to his injury.—American Bauxite Co. v. Dunn, Ark., 178 S. W. 934.

85. **Parent and Child**—Emancipation.—A master hiring an unemancipated minor and putting him at hazardous work is liable to his nonassenting parent for the direct consequences of the employment, so far as they entail a loss of the minor's services to the parent, whether the master is negligent or not.—Boutotte v. Daigle, Me., 95 Atl. 213.

86. **Payment**—Deposit in Mail.—The deposit in the mail of a package of money, addressed to a consignee, in the absence of any showing of agreement or custom, does not raise a presumption that the mail was the consignee's agent, but the money is presumed to belong to the sender until actually received by the consignee.—Masterson v. Union Bank & Trust Co., Wash., 150 Pac. 1126.

87. **Perjury**—Jurisdiction.—While perjury cannot be assigned upon a false oath taken in a proceeding void for want of jurisdiction, mere irregularities or informalities not sufficient to oust the jurisdiction of the court or prevent it from attaching in the first instance constitute no defense.—Thomas v. State, Ala. App., 69 So. 413.

88. **Pleading**—Sales Contract.—In an action by a subdealer in automobiles to recover the deposit made on executing a sales contract with a dealer, setting out the agreement in full, plaintiff held not required to allege that it lacked mutuality, as that would appear from the face of the pleading.—Hessenius v. Wetmore, S. D., 153 N. W. 937.

89. **Pledges**—Consideration.—The existence of a valid indebtedness is a sufficient consideration for a new promise or a pledge of property as security for the payment of such indebtedness.—In re Progressive Wall Paper Corporation, U. S. D. C., 224 Fed. 143.

90. **Principal and Surety**—Delivery.—Where a surety bond, containing names of others than the signers, is delivered to the principal to secure the signatures of others before delivery, the delivery to him is an escrow, and his delivery without securing the other signatures is void.—Williams v. Hitchcock, Wash., 150 Pac. 1143.

91. **Railroads**—Discovery of Peril.—In an action for the running down of plaintiff's intestate on a siding, it being a question for the jury whether his position of peril was discovered, it was proper to submit the last clear chance doctrine.—Ryan v. Union Pac. R. R. Co., Utah, 151 Pac. 71.

92.——Last Clear Chance.—Failure of an engineer, after observing a trespasser approaching a perilous position, to give signal, so that the trespasser could seek safety, held negligence.—Stuck v. Kanawha & M. Ry. Co., W. Va., 86 S. E. 13.

93. **Receiver**—Bond.—Former partners, procuring appointment of receiver for their own benefit, and who as sureties signed the receiver's bond and left it with him to secure another's signature, and who, after it was filed without such signature, did not repudiate it held estopped to say that creditors should have known that the bond was defective.—Williams v. Hitchcock, Wash., 150 Pac. 1143.

94.——Insolvency.—Creditors interested in the funds of an insolvent corporation should have notice of the claim for fees made by an attorney appointed by the receiver, before the court determines the amount thereof and directs pay-

ment of same.—City Bank of Wheeling v. Bryan, W. Va., 86 S. E. 8.

95. **Reformation of Instruments**—Mistake.—Where there is no mistake as to the terms of an agreement, but through a mistake of the scrivener it does not express the agreement actually made, it is not necessary to allege in the pleadings that the mistake was mutual, although that allegation must be made if the agreement itself is to be reformed.—MacDonald v. Crissey, N. Y., 109 N. E. 609.

96. **Sales**—Breach of Contract.—A purchaser who breached a contract to pay a draft for the price of goods and remove them from a railroad station, title to remain in the seller until paid, is not liable for a loss occasioned by the destruction of the goods by a fire in the depot.—Commander Mills Co. v. Schafer, Ga., 85 S. E. 1036.

97.——Inspection and Acceptance.—Where the buyer of iron pipe had inspected and accepted same, held, that he could not recover on the theory of an implied warranty that the pipe was adapted to the use for which it was bought.—Sherman v. Sheffield Cast Iron & Foundry Co., Okla., 150 Pac. 1062.

98.——Schedules.—Sales contract, whereby sub-dealer in automobiles undertook to buy of dealer 30 cars according to attached schedule, held incomplete and unenforceable where there was no such attached schedule, so that, until the cars other than those taken were tendered, the sub-dealer was not liable therefor.—Hessenius v. Wetmore, S. D., 153 N. W. 937.

99. **Seduction**—Persuasion.—Though prosecutrix loved whiskey, yet where accused gave her whiskey, this arousing her passions, and then fondled her until he was able to seduce her, he is guilty of the crime of seduction.—Smith v. State, Ala. App., 69 So. 402.

100. **Stipulations**—Quieting Title.—In an action by a purchaser to quiet title, involving the rights of prior mortgages by the grantor when an infant, the court, under the stipulation of facts, held required to presume that the infant was the legal owner, and not the grantee in a void deed.—Gruba v. Chapman, S. D., 153 N. W. 929.

101. **Street Railroads**—Approach to Crossing.—One cannot approach a crossing, and, after looking once from a point of safety to ascertain if a car is coming, and seeing none, pay no further attention.—Shore v. Dunham, Mo. App., 178 S. W. 900.

102.——Preferential Right.—While a street railroad has a preferential right of passage along and over its car tracks to which all others must yield, yet the street car operatives and a traveler must reciprocally exercise ordinary care to avoid injury.—Gibson v. Utah Light & Traction Co., Utah, 151 Pac. 76.

103. **Taxation**—Assessment.—Adoption of depreciated value of property as the value for assessment for taxation held not to render assessment void, where depreciated value was substantially the true value required for assessment by Rem. & Bal. Code, § 9112.—National Lumber & Mfg. Co. v. Chehalis County, Wash., 150 Pac. 1164.

104.——Workmen's Compensation Law.—Workmen's Compensation Law, §§ 15-20, relating to state insurance fund, held not violative of Const. art. 12, § 5, providing that no tax shall be levied except in pursuance of law, and that every law imposing a tax shall state distinctly the object of same.—Porter v. Hopkins, Ohio, 109 N. E. 629.

105. **Telegraphs and Telephones**—Anticipation of Injury.—Telephone company whose pole remained in schoolhouse yard with consent of city held not to owe any duty to safeguard it against contingency that a schoolboy would climb on the steps of the pole from adjacent premises and be injured while sliding down the guy wire.—McMinn v. New England Telephone & Telegraph Co., Me., 95 Atl. 210.

106.——Damages.—The damages which are recoverable for a telegraph company's failure to deliver a message, the receipt of which would have enabled the sendee to make an advantageous contract, are limited to those which follow as a legal certainty from the negligent act of the company.—McQuilkin v. Postal Telegraph Cable Co., Cal. App., 151 Pac. 21.

107. **Trade-Marks and Trade-Names**—Injunction.—Complainant held not entitled to restrain defendant from adopting the practice originated by complainant of marking its oysters with a metal tag, different in color and wording from complainant's.—Armstrong Seatag Corporation v. Smith's Island Oyster Co., U. S. C. C. A., 224 Fed. 100.

108. **Trespass**—Police Officer.—A police officer who at a seasonable hour entered the reception room of a dentist on a matter of personal business and thereafter created a disturbance and refused to leave, held not a trespasser ab initio.—Nichols v. Sonia, Me., 95 Atl. 209.

109. **Trusts**—Appointment.—The district court in its discretion may appoint a banker trustee of a trust for the benefit of an infant, instead of the guardian of the infant's person, where the duties of the trustee would not conflict with those of the guardian.—Kent v. McDaniel, Tex. Civ. App., 178 S. W. 1006.

110. **Vendor and Purchaser**—Marketable Title.—That defendant in an action for the purchase price of a tract of land made one of those, besides plaintiff, who was interested in the entire parcel, a party, does not destroy the defense that plaintiff could not furnish a marketable title.—North Highland Land Co. v. Holt, Ga., 85 S. E. 1039.

111. **War**—Contracts.—Contracts entered into before the beginning of hostilities continue in force during the war, and may be sued upon if to the disadvantage of the alien enemy defendant, who may always defend and who may in exceptional cases sue.—Compagnie Universelle de Telegraphie et de Telephonie Sans Fil v. United States Service Corporation, N. J. Ch., 95 Atl. 187.

112.——Contracts.—The exercise by a court of one country of jurisdiction to enforce contracts which arose and are to be performed outside of that country, and the parties to which are foreign to it, and who are subjects of nations at war, is not obligatory, but discretionary.—Watts, Watts & Co. v. Unione Austriaca di Navigazione, U. S. D. C., 224 Fed. 188.

113. **Warehousemen**—Reliance on Representations.—The law held to imply a contract for storage of goods in a fireproof building from representations by advertisement that the warehouse was fireproof, and reliance thereon by an owner storing goods therein.—Kirstein v. Bekins Van & Storage Co., Cal. App., 150 Pac. 999.

114. **Waters and Water Courses**—Caving-in of Well.—Where a landowner granted to an adjacent proprietor a one-half interest in a well, with appurtenances thereto, such grant did not entitle the adjacent proprietor, upon the caving-in of the well, to an interest in a new well dug in another place.—De Weber v. Cassiday, Cal. App., 151 Pac. 19.

115. **Wills**—Contest.—The court on dismissing a will contest on the death of the contestant should have done so only after substitution of his personal representative and by judgment running against such representative.—In re Baker's estate, Cal., 150 Pac. 989.

116.——Election.—A surviving husband, who became entitled to the homestead of his wife, held not compelled to make an election whether to take under her will, where there was no other property, notwithstanding the will made other distribution.—Williams v. Williams, Cal., 151 Pac. 10.

117.——Income.—Where real estate was devised to be sold and the proceeds held in trust for one for life, remainder to others, the proceeds upon the sale, after several years' delay, should be divided as income to the life tenant from testator's death, and principal to the remaindermen.—Lawrence v. Littlefield, N. Y., 109 N. E. 611.

118. **Work and Labor**—Quantum Meruit.—Where a builder or workman partially completes a job, and abandons it, and the owner completes it utilizing the work done, recovery may, under some circumstances, be had on a quantum meruit or quantum valebat.—Salas v. Powers, Ga., 85 S. E. 1039.